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In the United States Patent and Trademark Office

Applicants:	Ganesh Chandra Deka et al.	Docket No.:	18208
Serial No.:	10/627,558	Group:	1771
Confirmation No:	3392	Examiner:	Sperty, Arden B.
Filed:	July 25, 2003	Date:	November 28, 2005
For:	NONWOVEN FABRIC WITH ABRASION RESISTANCE AND REDUCED SURFACE FUZZINESS		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants request review of the final rejection in the above-identified application. No amendments are submitted with this request.

This request is being filed contemporaneously with a Notice of Appeal. The review is requested for the reasons stated in the Remarks on the attached sheets following this request, of which there are not more than five.

Respectfully submitted,

GANESH CHANDRA DEKA ET AL.

By Robert A. Ambrose

Robert A. Ambrose
Registration No.: 51,231

CERTIFICATE OF FACSIMILE TRANSMISSION

I, Robert A. Ambrose, hereby certify that on November 28, 2005, this document is being faxed to the United States Patent and Trademark Office, central fax machine at (571) 273-8300.

By: Robert A. Ambrose

Robert A. Ambrose

Appl. No. 10/627,558

K-C Docket No. 18208

Pre-Appeal Brief Request for Review dated November 28, 2005

REMARKS

Applicants request that the panel review the legal and factual insufficiencies of the rejections contained in the final Office Action mailed July 28, 2005, as set forth in the final Office Action and as further discussed in the Advisory Action mailed November 22, 2005.

Per Paragraph 3 of the Office Action mailed July 28, 2005 (please see bottom of page 2, top of page 3) claims 1-24, 36 and 37 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by and thus unpatentable over U.S. Pat. No. 6,169,045 to Pike et al. Although at least two of Applicants' required claims elements were not found in the 6,169,045 Pike et al. reference, the Examiner states that the missing required elements are inherently present since the reference teaches the same materials formed according to the same process, and having the same density.

Please see Applicants' remarks in response in the paper received at the Office on October 28, 2005, particularly on pages numbered 6 – 7 and ending at the top of page numbered 8, and the discussion on page 10. Applicants believe they have clearly rebutted the Examiner's presumption of inherency. First, Applicants have demonstrated that the Examiner's very basis for presumption (same materials made via same processes) is not correct. Second, Applicants have shown by the testing data present in their Application that nonwoven materials made in a process that is substantially similar to the relied-upon and cited art fail to possess the missing required claims elements, while the samples of Applicants' Example materials do possess the required elements. For these reasons, Applicants submit they have successfully rebutted the Examiner's presumption of inherency.

However, the Examiner has further stated that Applicants must show a "difference in texture or roughness of the liner compared to the foraminous forming surface of the reference" (please see Continuation Sheet of the Advisory Action mailed November 22, 2005). Applicants submit that this is clearly an inappropriate additional requirement. It is the claimed nonwoven web materials themselves (and not the liner or surface upon which made) that must possess the claims elements. Applicants believe they have clearly shown the cited art materials to not possess these elements; i.e., have shown they are not inherent as they were purported to be in the Office Actions. Once this presumption of inherency has been successfully rebutted, the missing elements can no longer be said to be inherently anticipated by the cited art.

Appl. No. 10/627,558

K-C Docket No. 18208

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Per Paragraph 4 of the Office Action mailed July 28, 2005 (please see mid-page 3), claims 1-13 and 36 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by and thus unpatentable over U.S. Pat. No. 5,605,749 to Pike et al., or alternatively under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over 5,605,749 to Pike et al. Although at least two of Applicants' required claims elements are not found in the 5,605,749 Pike et al. reference, the Examiner states that the missing required elements are present or obviously present since the reference teaches the same materials, forming the web according to the same properties, and having the same density.

Please see Applicants' remarks in the paper received at the Office on October 28, 2005, particularly from the first full paragraph of page numbered 8, through page 9. In particular, note that Applicants submit that the Examiner has never yet asserted or shown the 5,605,749 Pike et al. reference to either explicitly or implicitly (or inherently, or obviously, or in any way) disclose the surface roughness required by Applicants' claims. For this reason alone, the rejection over the 5,605,749 Pike et al. reference should be withdrawn. In addition, Applicants further submit that the statement in the 5,605,749 Pike et al. reference relied upon by the Examiner, that continuous fiber webs are less likely to lose fibers ("lint") than short fiber webs, does not provide legal anticipation of Applicants' webs having the required fuzz-on-edge value, especially in light of Applicants' showing that webs made by processes more similar to those disclosed in the two Pike et al. references do indeed fail to meet this claim element.

CONCLUSION

Applicants request that the panel find for the Applicants concerning each of the above rejections, and such favorable consideration is respectfully requested.

Respectfully submitted,

GANESH CHANDRA DEKA ET AL.

By: 

Robert A. Ambrose

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